IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 511 OF 2006

Mr. Balu Maruti Shendge ....Applicant.

V/s

The State of Maharashtra ....Respondent.

Mr. Nitin Gangal for the applicant.
Ms. S.D. Shinde, APP for the State.

CORAM: V.M. KANADE, J.
DATE: 10th March, 2006

P.C:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. The applicant was arrested in connection with C.R. No. 78 of 2005 registered at Mhaswad Police Station for the offence punishable under section 302 of the Indian Penal Code on 5/11/2005.

3. The prosecution case is that the applicant suspected his wife's character and, after she gave birth to a female child, he had told her that the child did not belong to him and that he would kill her by poisoning her. The prosecution case is that the wife also had informed her neighbour about the threat given by the applicant and her neighbour had told her

not to leave the child alone. It is alleged that on the date of the incident the mother of the child left the child in the house, locked the door from outside and went to the field at 8.00 a.m. She returned back at 10.00 a.m. and when she went inside the house, she found that white froth was coming out of her nose and mouth. She raised hue and cry. The other members of the family came there and noticed that the child had died and the white froth was coming from her mouth. It is the case of the prosecution that one and half month prior to the incident, the applicant had purchased an insecticide which was kept by him in the field and that he was seen going towards the house at 9.30 a.m. alongwith the said bottle by one of the neighbours.

4. In the present case, charge-sheet has been filed. The chemical analysis of viscera which was sent has not been received so far. It is no doubt true that there are statements of witnesses who have stated that the applicant had doubted the paternity of the child. However, it is difficult to believe that the mother of the child would leave the child alone in the house for a period of two hours particularly when the child was three months old. Admittedly, the applicant, complainant and the child were residing in the newly

constructed house beside the old house. Even under the normal circumstances, the mother would have taken three months old child alongwith her and would have kept the child in the field. In this case, it is difficult to believe that she was keeping the child alone for two hours particularly when she was warned by her neighbour not to keep her alone. This is one of the circumstances which does create a doubt regarding the alleged commission of the offence at the behest of the applicant. The applicant did not run away and was found in the field when the mother went back and found the child in the said condition. Taking, an overall view of the matter and particularly when the charge-sheet has been filed and further since there are no eye witness to the said incident, in my view, this is a fit case for grant of bail. There are few missing links in the chain of circumstances and evidence.

5. In these circumstances, the applicant be released on bail in the sum of Rs 5000/- with one or two sureties in the like amount. However, in order to ensure that the applicant does not threaten the witnesses some stringent conditions will have to be imposed. The applicant not to enter the jurisdiction of Mhaswad Police Station, pending the hearing and

final disposal of appeal. He shall give his new address to the Superintendent of Jail before he is released and he should report to the nearest Police Station from his new address once in a month.

6. It is clarified that the trial court shall not be influenced by the observations made by this Court in this order and it may not be construed to mean as an expression of opinion on the merits of the case.

7. If any attempt is made by the applicant to tamper with the evidence or to threaten the witnesses, liberty is granted to the Public Prosecutor to apply for cancellation of the bail.

8. Application is accordingly disposed of.

V.M. KANADE, J.